

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KENNETH GONZALES,

Plaintiff,

v.

Civ. No. 06-466 MCA/RLP

CITY OF SOCORRO, SOCORRO POLICE
DEPARTMENT, and JOEL HALEY,
in his individual and official capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion to Stay Discovery. Defendants argue they have filed a Motion for Summary Judgment [Doc. 27] and have asserted the defense of qualified immunity and therefore a stay is warranted. For the reasons set forth below, the Motion is denied.

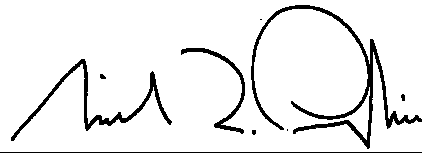
Qualified immunity protects a defendant from suit and therefore that protection should be raised at the earliest opportunity. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam); *Jones v. City and County of Denver*, 854 F.2d 1206, 1211 (10th Cir. 1988) (until the threshold immunity is resolved, discovery should not be allowed). There are several facts about this case, however, that indicate the stay should not be granted.

The case was removed to this Court in June, 2006. The Initial Pretrial Report [Doc. 10], indicates that discovery concludes on May 28, 2007. Thus, Defendants have waited until the *end* of discovery to file their motion, and the primary reason to grant the stay (prejudice to the defendant) is obviated and a stay at this juncture would prejudice the Plaintiff.

Second, the defense of qualified immunity only applies to the individual defendant in this case sued in his individual capacity under 42 U.S.C. § 1983. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The defense has no applicability to the Title VII claims. Section 1983 is raised in only two counts of the Complaint and the pending Motion for Summary Judgment involves more issues than § 1983 and to stay all discovery at this point would be prejudicial to the Plaintiff.

IT IS THEREFORE ORDERED that Defendants' Motion to Stay Discovery [Doc. 33] is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge